IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

Bail Appl..No. 6419 of 2007()

PANDALAM POLICE STATION CRIME NO.579/07

: PETITIONERS/ACCUSED NO. 1 & 2

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1. SAJI, AGED 39, S/O.KOSHY,
UDAYANTTAYYATHU, PONGAZHI MURI, PANDALAM.

2. ANNAMMA, AGED 64, W/O.KOSHY,
UDAYANTTAYYATHU, PONGAZHI MURI,
PANDALAM.

BY ADV. SRI.B.BALRAJ

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6419 of 2007

Dated this the 24th day of October, 2007

ORDER

Application for anticipatory bail. Petitioners are the husband and mother in law of the defacto complainant. The marriage took place on 22.10.06. Complaint has been lodged on 01.10.07. Matrimonial cruelty of the culpable variety is alleged against the petitioners. It was the second marriage of the defacto complainant and the first marriage of the petitioner. The petitioners are alleged to be guilty of physical and mental cruelty against the defacto complainant. The crime was registered on 1.10.07. In the crime it is alleged that on 13.08.07, the 1st petitioner, the husband had beaten the defacto complainant with a log of wood and had caused a fracture. But admittedly they had subsequently resumed harmonious cohabitation. It is later that the present complaint has been filed on 1.10.07.

2. The learned counsel for the petitioners submits that the allegations are totally false. The marriage was less than one year old. There was some strain in the matrimonial tie. Because of such strain, false allegations are being raised. The petitioners may, in these circumstances, be granted anticipatory bail, submits the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor points out that the defacto complainant

is shown to have suffered a grievous injury in the incident which took place on 13.08.07, though no prompt complaint was raised before the authorities. Notwithstanding the fact that no complaint had been filed and notwithstanding the fact that the spouses had resumed cohabitation after 13.08.07, the 1st petitioner husband may not be granted anticipatory bail. So far as the 2nd petitioner mother in law is concerned, the learned Public Prosecutor raises no objection against grant of anticipatory bail.

4. I have considered all the relevant inputs. Considering the totality of facts and circumstances I am of the opinion that this is a fit case where anticipatory bail can be granted to the petitioners notwithstanding the allegations raised about the incident that took place on 13.08.07. What tilts the scales in favour of the petitioners in my mind is the fact that the parties thought it proper and fit to resume cohabitation even after the incident that took place on 13.08.07. I further take note of the fact that arrest and incarceration of the petitioners in custody is likely to mar the matrimonial tie beyond repair. Appropriate conditions can of course be imposed.

5. In the result, the Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioners shall appear before the learned Magistrate at 11 a.m on 31.10.07. They shall be enlarged on regular bail on their

executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m and 3 p.m on 01.11.07 and 02.11.07 and thereafter between 10 a.m and 12 noon on all Mondays and Fridays for a period of 2 months. Subsequently the petitioners shall make themselves available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if those directions were not issued at all;

iv) If the petitioners were arrested prior to their surrender on 31.10.07 as directed in clause (1) above, they shall be released from custody on their executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) without any sureties undertaking to appear before the learned Magistrate on 31.10.07.

(R.BASANT, JUDGE)

rtr/-